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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

In re:	:	Case No. 08-14631 (GMB)
	:	(Jointly Administered)
Shapes/Arch Holdings L.L.C., et al.	:	
	:	Chapter 11
Debtors	:	

**SETTLEMENT AGREEMENT**

**I. BACKGROUND**

WHEREAS, Shapes/Arch Holdings L.L.C., Shapes L.L.C., Delair L.L.C., Accu-Weld L.L.C., and Ultra L.L.C. (the "Debtors"), filed with the United States Bankruptcy Court for the District of New Jersey ("Bankruptcy Court") voluntary petitions for relief under Title 11 of the United States Code ("Bankruptcy Code") on March 16, 2008 ("Petition Date");

WHEREAS, these matters have been consolidated for procedural purposes and are being administered jointly as Case No. 08-14631(GMB);

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency ("EPA"), contends that Shapes L.L.C. ("Shapes"), one of the Debtors,

is liable under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., for response costs incurred and to be incurred by the United States in the course of responding to releases and threats of releases of hazardous substances into the environment at the Liquidated Sites (as defined hereinbelow);

WHEREAS, the United States, on behalf of EPA, has filed a proof of claim against Shapes with respect to the Swope Oil Superfund Site located in Pennsauken, New Jersey ("Swope Oil Site"), which alleges that Shapes is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with respect to the Swope Oil Site and sets forth a claim in the amount of \$18.8 million, a portion of which was filed as a protective claim;

WHEREAS, Shapes would dispute the United States' contentions and, but for this Settlement Agreement, would object in whole or in part to the United States' proof of claim;

WHEREAS, the United States takes the position that, in view of Section 502(b)(9) of the Bankruptcy Code, 11 U.S.C. § 502(b)(9), it may file additional proofs of claim in this proceeding at any time on or before September 12, 2008;

WHEREAS, Shapes and EPA wish to resolve their differences with respect to the Liquidated Sites and deal with other issues relating to environmental matters as provided herein;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, including, without limitation, the covenants not to sue set forth in Paragraphs 10, 12, and 16, subject to the provisions of Paragraphs 20-22, intending to be

legally bound hereby, the Debtors and the United States hereby agree to the terms and provisions of this Settlement Agreement;

WHEREAS, settlement of the matters governed by this Settlement Agreement is in the public interest and an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

## II. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or its regulations or in the Bankruptcy Code shall have the meaning assigned to them in CERCLA, its regulations, or the Bankruptcy Code. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

a. “Bankruptcy Court” or the “Court” refers to the United States Bankruptcy Court for the District of New Jersey where the Bankruptcy Cases are currently pending.

b. “Bankruptcy Cases” shall mean the Chapter 11 bankruptcy cases captioned In re Shapes/Arch Holdings L.L.C. et al., Case No. 08-14631 (GMB) (Bankr. D.N.J.).

c. “CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as now in effect or hereafter amended.

d. "Claims" has the meaning provided in Section 101(5) of the Bankruptcy Code.

e. "Debtors" shall mean Shapes L.L.C., Delair L.L.C., Accu-Weld L.L.C., and Ultra L.L.C. as debtors, debtors-in-possession, or in a new or reorganized form as a result of the Bankruptcy Cases.

f. "Discharged Site" shall mean the Puchack Wellfield Superfund Site located in Pennsauken Township, NJ, including all areas of the Puchack Wellfield Site defined by EPA for purposes of the NPL, including any later expansion of the Puchack Wellfield Site as may be determined by EPA.

f. "EPA" means the United States Environmental Protection Agency or any legal successor thereto.

g. "Effective Date" means the date on which this Settlement Agreement is approved by the Bankruptcy Court.

h. "Liquidated Sites" means the following six sites:

i. Swope Oil Superfund Site, Pennsauken Township, NJ;

ii. Ewan Superfund Site, Shamong Township, NJ;

iii. D'Imperio Superfund Site, Hamilton Township, NJ;

iv. Lightman Drum Company Site, Elizabeth, NJ;

v. Chemical Control Corporation Site, Elizabeth, NJ; and

vi. Berks Associates/Douglasville Disposal Site, Douglasville, PA.

A "Liquidated Site" delineated above shall be construed to include (i) for those sites now or hereafter included on the NPL, all areas of a site as defined by EPA for purposes of the NPL, including any later expansion of such site as may be determined by EPA, or (ii) for

those sites not included on the NPL, all areas affected or potentially affected by the release or threatened release of hazardous substances.

- i. "NPL" means the National Priorities List, 40 C.F.R. Part 300.
- j. "Plan of Reorganization" or "Plan" means any plan of reorganization that is confirmed and becomes effective in the Bankruptcy Cases.
- k. "Prepetition" refers to the time period on or prior to the date of the commencement of the Bankruptcy Cases.
- l. "Postpetition" refers to the time period from and after the commencement of the Bankruptcy Cases.
- m. "United States" means the United States of America, including all of its agencies, departments and instrumentalities.

### **III. JURISDICTION**

- 2. The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157 and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

### **IV. PARTIES BOUND; SUCCESSION AND ASSIGNMENT**

- 3. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, the Debtors, and the Debtors' legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Cases.

### **V. TREATMENT OF LIQUIDATED SITES**

- 4. In settlement and satisfaction of the Claims of EPA under CERCLA with respect to the Liquidated Sites, Debtors shall make the payments set forth below ("Payment Amounts") to EPA, totaling \$811,924, within 30 days of the Effective Date. EPA shall receive no distributions from the Debtors with respect to the Debtors'

liabilities and obligations under CERCLA for the Liquidated Sites other than as set forth in this Settlement Agreement.

a. With respect to the Swope Oil Superfund Site located in Pennsauken Township, NJ, Debtors shall pay the United States on behalf of EPA \$375,000 in full;

b. With respect to the Ewan Superfund Site located in Shamong Township, NJ, Debtors shall pay the United States on behalf of EPA \$62,418 in full;

c. With respect to the D'Imperio Superfund Site located in Hamilton Township, NJ, Debtors shall pay the United States on behalf of EPA \$149,506 in full;

d. With respect to the Lightman Drum Company Site located in Winslow Township, NJ, Debtors shall pay the United States on behalf of EPA \$225,000 in full;

e. With respect to the Chemical Control Corporation Site located in Elizabeth, N.J., Debtors shall pay the United States on behalf of EPA zero dollars;

f. With respect to the Berks Associates/Douglasville Disposal Site, located in Douglasville, PA, Debtors shall pay the United States on behalf of EPA zero dollars.

5. The Payment Amount for each Liquidated Site set forth in Paragraphs 4.a-4.d shall be deposited in the EPA Hazardous Substance Superfund or, in EPA's sole discretion, some or all of the Payment Amounts may be placed in a Special Account for the Liquidated Sites set forth in Paragraphs 4.a-4.d within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Swope Oil Superfund Site, the Ewan Superfund Site, the D'Imperio

Superfund Site, and/or the Lightman Drum Company Site, respectively. Pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), the Payment Amount for each Liquidated Site shall reduce the potential liability of other potentially responsible parties at that Liquidated Site by the amount of the Payment Amount.

#### **VI. TREATMENT OF PAYMENT AMOUNTS**

6. The Payment Amounts do not constitute, nor shall they be construed as, forfeitures, fines or penalties (or payments in lieu thereof), and nothing herein is intended, or shall be construed, as an admission by Debtors of any facts or any violation of law. Notwithstanding the foregoing, Debtors agree to comply with all terms of this Settlement Agreement upon the Effective Date.

7. Proof of Claim No. 644 shall be deemed satisfied in full in accordance with the terms of this Settlement Agreement. EPA shall be deemed to have filed a proof of claim for other matters addressed in this Settlement Agreement, which proof of claim shall be deemed satisfied in full in accordance with the terms of this Settlement Agreement.

#### **VII. DISTRIBUTION INSTRUCTIONS**

8. Distributions to the United States shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures. Payment shall be made in accordance with instructions provided to the Debtors by the Financial Litigation Unit of the United States Attorney's Office for the District of New Jersey and shall reference the Civil Action Number 08-14631(GMB) and DOJ File Number 90-11-3-09456. The

Debtors shall transmit written confirmation of such payments to the United States at the addresses specified in Paragraph 19.

#### **VIII. TREATMENT OF DISCHARGED SITE**

9. With respect to the Discharged Site, all liabilities and obligations of the Debtors to EPA under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, arising from Prepetition acts, omissions or conduct of the Debtors including, without limitation, the Prepetition generation, transportation, disposal or release of hazardous wastes or materials or the Prepetition ownership or operation of hazardous waste facilities, shall be discharged under Section 1141 of the Code by the confirmation of a Plan of Reorganization, and the EPA shall receive no distributions in the Chapter 11 Cases with respect to such liabilities and obligations.

#### **IX. COVENANTS NOT TO SUE AND RESERVATION OF RIGHTS**

10. In consideration of all of the foregoing, including, without limitation, the payments that will be made pursuant to the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 14 through 15, EPA covenants not to file a civil action or to take any administrative or other action against Debtors pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to each of the Liquidated Sites. These covenants not to sue shall take effect when all of the payments required by Paragraph 4 have been made.

11. This Settlement Agreement in no way impairs the scope and effect of the Debtors' discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any Claims that are not addressed by this Settlement Agreement.



12. Without in any way limiting the covenant not to sue (and the reservations thereto) set forth in Paragraph 10 and notwithstanding any other provision of this Settlement Agreement, such covenant not to sue shall also apply to the Debtors' successors and assigns, managers, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, manager, officer, director, employee, or trustee of any Debtor is based solely on its status as and in its capacity as a successor or assign, manager, officer, director, employee, or trustee of that Debtor.

13. The covenants not to sue contained in Paragraphs 10 and 12 of this Settlement Agreement extend only to the Debtors and the persons described in Paragraphs 10 and 12 above and do not extend to any other person.

14. The covenants not to sue contained in Paragraphs 10 and 12 of this Settlement Agreement shall not apply to nor affect any action based on (i) a failure to meet a requirement of this Settlement Agreement; (ii) criminal liability; and (iii) conduct of the Debtors at any Liquidated Site occurring after the date of lodging of this Settlement Agreement which would give rise to liability under 42 U.S.C. §§ 9606 and 9607(a)(1)-(4).

15. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal or state law or

regulation, or to excuse the Debtors from any disclosure or notification requirements imposed by CERCLA, the Resource Conservation and Recovery Act, or any other applicable federal or state law or regulation.

16. The Debtors hereby covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States with respect to the Liquidated Sites including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substances Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law; any claim against the United States, including any department, agency or instrumentality of the United States, under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613 related to the Liquidated Sites; or any claims arising out of response activities at the Liquidated Sites. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, 40 C.F.R. § 300.700(d).

#### **X. CONTRIBUTION PROTECTION**

17. The Debtors are entitled to protection from contribution actions as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for the “matters addressed” by this Settlement Agreement. The “matters addressed” by this Settlement Agreement shall include all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person (except for the states of New Jersey and Pennsylvania) with respect to the Liquidated Sites.

18. The Debtors agree that with respect to any suit for contribution brought against any of them after the Effective Date for matters related to this Settlement Agreement, they will notify the United States within fifteen business days of service of the complaint upon them. In addition, in connection with such suit, the Debtors shall notify the United States within fifteen business days of service or receipt of any Motion for Summary Judgment and within fifteen business days of receipt of any order from a court setting a case for trial (provided, however, that the failure to notify the United States pursuant to this Paragraph shall not in any way affect the protections afforded under Section IX (Covenants not to Sue and Reservation of Rights)).

#### **XI. NOTICES AND SUBMISSIONS**

19. Whenever, under the terms of this Settlement Agreement, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below via U.S. mail, unless those individuals or their successors give notice of a change of address to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Settlement Agreement, written notice as specified herein shall constitute complete satisfaction of any written notice requirement in the Settlement Agreement with respect to the United States, and the Debtors, respectively.

##### **As to the United States:**

Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice  
1425 New York Ave. N.W.  
Washington, D.C. 20005  
Ref. DOJ File No. 90-11-3-09456

Donald G. Frankel  
Trial Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
Suite 616  
One Gateway Center  
Newton, MA 02458

Michael J. van Itallie  
Assistant Regional Counsel  
EPA Region 2  
290 Broadway  
New York, NY 10007-1866

New Jersey Remediation Branch  
Emergency and Remedial Response Division  
EPA Region 2  
290 Broadway  
New York, NY 10007-1866  
Attention: Branch Chief

Richard Rice  
26 West Martin Luther King Drive  
Cincinnati Finance Center, MS: NWD  
Cincinnati, OH 45268

As to the Debtors:

Steven Grabell, Esquire  
Chief Executive Officer  
9000 River Road  
Delair, NJ 08110

Mark E. Felger, Esquire  
Jerrold N. Poslusny, Jr., Esquire  
Cozen O'Connor  
LibertyView, Suite 300  
457 Haddonfield Road  
Cherry Hill, NJ 08002

## **XII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

20. This Settlement Agreement shall be subject to approval of the Bankruptcy Court. The Debtors shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or other applicable provisions of the Bankruptcy Code. The hearing on Debtors' request for such approval shall not be held until the United States informs the Bankruptcy Court of any public comments on the Settlement Agreement and the United States' responses to those comments.

21. This Settlement Agreement shall be lodged with the Bankruptcy Court for public notice and comment for a period not less than ten days. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the Bankruptcy Court will be requested by motion of the United States to approve the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations indicating that the Settlement Agreement is not in the public interest.

22. If for any reason (i) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 21, (ii) the Settlement Agreement is not approved, or (iii) the Bankruptcy Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code before the effective date of a Plan of Reorganization: (a) this Settlement Agreement shall be null and void and the parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or

under any documents executed in connection herewith; (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value, and it shall be as if they had never been executed; and (d) this Settlement Agreement, any statements made in connection with settlement discussions, and any documents prepared in connection herewith may not be used as evidence in any litigation between the parties.

### **XIII. AMENDMENTS/INTEGRATION AND COUNTERPARTS**

23. This Settlement Agreement and any other documents to be executed in connection herewith shall constitute the sole and complete agreement of the parties hereto with respect to the matters addressed herein. This Settlement Agreement may not be amended except by a writing signed by all parties to this Settlement Agreement.

24. This Settlement Agreement may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same agreement.

### **XIV. RETENTION OF JURISDICTION**

25. The Court (or, upon withdrawal of the Court's reference, the U.S. District Court of the District of New Jersey) shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES OF AMERICA:

Date: 4 September 2008 By:

Ronald J. Tenpas  
Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: 9/5/08 By:

Donald G. Frankel  
Trial Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
Suite 616  
One Gateway Center  
Newton, MA 02458

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 8/21/08 By:

George Pavlou  
Acting Director  
Emergency and Remedial Response  
Division  
EPA Region 2  
290 Broadway  
New York, NY 10007-1866

Date: 8/12/08 By:

Michael J. van Itallie  
Assistant Regional Counsel  
EPA Region 2  
290 Broadway  
New York, NY 10007-1866

FOR THE SHAPES/ARCH HOLDINGS L.L.C.:

Date: 8/19/08

By:

Steven G. Lell, CEO



FOR SHAPES L.L.C.:

Date: 8/18/08

By: Steven Grobel, CEO

FOR DELAIR L.L.C.:

Date: 8/18/08

By: Stefan Grubel, VP

FOR ACCU-WELD L.L.C.:

Date: 8/13/08

By: Stella Grubert, VP

FOR ULTRA L.L.C.:

Date: 8/18/28

By:

Stella Grobel, J.P.